

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES SPRINGER,

Plaintiff,

v.

Civil Action No. 1:23-cv00499-MIS-JMR

**SEVENTH JUDICIAL DISTRICT COURT,
MERCEDES MURPHY,
SHANNON MURDOCK-POFF, JASON JONES,
and SUSAN ROSSIGNOL,**

Defendants.

**APPLICATION FOR CLERK'S ENTRY OF DEFAULT AS TO
PARTICULAR DEFENDANTS**

COMES NOW, Plaintiff James Springer, by and through counsel of record Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq. and Jared R. Vander Dussen, Esq.) and Zach Cook, Esq. and files this application for clerk's entry of default as to all Defendants pursuant to the Federal Rules of Civil Procedure, Rule 55.

STANDARDS FOR DEFAULT JUDGMENT

The Federal Rules of Civil Procedure, Rule 55 anticipates the entry of default judgment in certain circumstances. To that end, Rule 55 provides in pertinent part:

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

Fed. R. Civ. P., Rule 55. "Rule 55 mandates a two-step process for a party who seeks a default judgment in his favor." *Williams v. Smithson*, 57 F.3d 1081 (10th Cir.1995) (unpublished table decision). The party seeking a default judgment must first "apprise the court that the opposing party has failed to plead or otherwise defend by requesting 'by affidavit or otherwise' that the

clerk enter default on the docket.” *Id.* (quoting Fed. R. Civ. P., Rule 55(a)). Then, after entry of default by the clerk of the court, “the party entitled to a judgment by default shall apply to the court therefor.” *Id.* (quoting Fed.R.Civ.P., Rule 55(b)(2)); *Rowley v. Morant*, 276 F.R.D. 669, 670 (D.N.M. 2011)(internal citation omitted).

DISCUSSION

The Complaint was filed in this matter on June 9, 2023 (ECF Doc. 1). were served with the Complaint and the Motion for TRO and PI in this matter on June 9, 2023. Defendants were personally served along with the Summons at the Clerk’s Office of Seventh Judicial District Court located in Estancia, NM. As of the date of this filing, 60 days have passed from the service of the Complaint upon Defendants without any of the named Defendants answering the complaint.

CONCLUSION

Defendants have failed to plead or otherwise defend in this matter. An Entry of Default on the docket is therefore warranted in this matter as to the Defendants. Affidavits of Nonmilitary Service pursuant to the Soldiers’ and Sailors’ Civil Relief Act of 1940, 50 U.S.C. §§ 501 *et seq.* for Defendants Murphy, Murdock, Jones and Rossignol are filed concurrently with this Application for Clerk’s Entry of Default.

Respectfully submitted this 7th day of August 2023.

WESTERN AGRICULTURE, RESOURCE
AND BUSINESS ADVOCATES, LLP

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed August 7, 2023 via the CM/ECF System and a true and correct copy served upon Defendants via USPS as follows:

Clerk's Office Seventh Judicial District Court
Neil Mertz Judicial Complex
903 N. 5th Street
Estancia, NM 87016

/s/ A. Blair Dunn

A. Blair Dunn, Esq.